

REMARKS

The Examiner has objected to Claim 25 due to a minor informality. Applicant has amended the claim in accordance with the Examiner's comments. Reconsideration and withdrawal of the objection is respectfully requested.

Claims 25 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the invention. Applicant has amended the claim in view of the Examiner's helpful comments. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-7, 11-13, 20-28 and 34-35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Held et al. in view of Schildkraut et al. Applicant respectfully requests reconsideration of the rejection.

The claimed invention measures a defect pair separation and then adjusts a size of the defects of the defect pair in response to the defect pair separation. The Examiner readily admits 1.) "Held doesn't explicitly suggest that the redeye defect is a redeye defect pair and the separation of the defect pair is measured and used to adjust the defects" (Final Office Action, page 7, first full paragraph); and 2.) "[S]childkraut alone does not suggest utilizing the separation distance as a parameter to adjust the size of detected defects" (Final Office Action, page 3, line 8-10). Accordingly, the Examiner has admitted on the record that neither reference discloses or suggests a key feature of the invention, namely, adjusting the size of defects of the defect pair in response to the defect pair separation. If neither reference discloses or suggests a key feature of the invention, then the combination of references cannot establish a prima facie case of obviousness as required under 35 U.S.C. 103.

As previously noted by Applicant, Schildkraut et al. is directed to finding pairs of eyes in images in which orientation of the image is unknown. In Schildkraut et al., the given distance between the eyes is utilized to place a limit on the potential size of the pupils of the eyes. As illustrated in Fig. 17A, however, the size of the pupil is used to assign a score based on a pupil ratio between left and right candidate defects (Step S30g). The score is then used to determine an orientation of the pupil pair (Step S30h). Thereafter, eye templates are utilized to actually define the shape and size of the defect pair

(Step S30j). Accordingly, while Schildkraut et al. discusses the relationship between separation distance and pupil size, Schildkraut et al. never discloses or suggests utilizing the separation distance as a parameter to adjust the size of detected defects.

Held et al., like Schildkraut et al., discloses detection of eye location. Further, Held et al. discloses correction of “red eyes” found at the eye location. However, as already noted by the Examiner, there is nothing Held et al. to suggest the use of separation distance to provide correction. At best, the combination of the two references would fairly suggest the use of the eye detection method of Schildkraut et al. to detect the location of a pair of eyes in Held et al. While the method of detecting eye location might change in Held et al. as a result of such a combination, there would be no basis for utilizing defect pair separation itself to adjust pupil size as claimed. Instead, as specifically taught in Schildkraut et al., eye templates would be utilized to actually define the shape and size of the defect pair.

Applicant submits the only suggestion for adjusting a size of the defects to provide adjusted defects responsive to the defect pair separation and then color correcting the adjusted defects is found in applicant’s own disclosure. While it is true that Held et al. discusses defect correction and Schildkraut et al. utilizes distance to place a limit on the size of potential pupils, neither reference taken alone or in combination manages to link the concept of utilizing pair separation to adjust the size of the defects prior to application of color correction as claimed. The only reason that Schildkraut et al. utilizes the separation distance is to place a limit on the potential size of the pupils of the eyes in a part of a process that determines eye location. In fact, when it comes to actually determining the size and shape of the eyes determined to be at the eye location, Schildkraut et al. relies on the conventional use of eye templates.

In response to Applicant’s argument that the Examiner is relying on hindsight knowledge of applicant’s own disclosure, the Examiner cites In re McLaughlin. The Examiner first recites “it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning”, but then seems to ignore the second recited sentence, namely, “But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant’s disclosure, such a

reconstruction is proper". In this case, the Examiner is clearly relying on knowledge that can only be gleaned from applicant's disclosure.

Applicant requests entry of this amendment in preparation for appeal. A Notice of Appeal has been submitted concurrent herewith. As the amendment reduces the number of issues on appeal by addressing the objection and rejection of claim 25, entry of the amendment after final rejection of the claims is proper.

Applicant also asks for reconsideration of the final rejection of the claims once more before proceeding with the appeal brief. Applicant submits the rejection is clearly improper for the reasons set forth above. Accordingly, it should not be necessary for the Examiner to add to the Board's current burden by requiring applicant to proceed with appeal when such appeal is clearly not warranted.

Applicant suggests that the Examiner review the final rejection with the Supervisory Patent Examiner (SPE) prior to reaching a final decision. Further, applicant suggests it may be beneficial for the Examiner and the SPE to discuss this case in person with the undersigned attorney of record. Accordingly, applicant requests that the undersigned attorney of record be contacted at 703-726-6020 to arrange a personal interview with Examiner and the SPE in the event that the Examiner intends to maintain the final rejection of the claims.

Respectfully submitted,

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